

EMILIANA BALAQUI ET AL., PLAINTIFFS AND APPELLANTS, VS. PLACIDA DONGSO ET AL., DEFENDANTS AND APPELLEES.

G.R. No. 31161. October 28, 1929

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is an appeal taken by the plaintiffs, Emiliana Balaqui and others, from the judgment of the Court of First Instance of Ilocos Sur dismissing their complaint and absolving the defendants, with costs against them. In support of their appeal, the appellants assign the following alleged errors as committed by the court below in its judgment, to wit:

"1. The lower court erred in not holding that the gift referred to in Exhibit A, made by Hipolita Balaqui to Placida Dongso, is void.

"2. The lower court erred in not holding that the deed of sale, Exhibit E, executed by Placida Dongso in favor of Teodoro Valdez and others, is null and void.

"3. The lower court erred in dismissing the complaint with costs against the plaintiffs, when it should have found that the realty described in the original and amended complaint, including the house and shed, belongs to the plaintiffs, who inherited it from Hipolita Balaqui.

"4. The lower court erred in not ordering the defendants to deliver to the plaintiffs the property in question together with its fruits from the date of the complaint, at the rate of one hundred (P100) pesos a year, plus the costs.

"5. The lower court erred in denying the plaintiffs motion for a new trial."

The main and basic question to be determined in the instant appeal is whether or not the donation evidenced by Exhibit A, made by Hipolita Balaqui in favor of Placida Dongso, is null and void.

The English version of the official Spanish translation (Exhibit A-I) of the deed of gift Exhibit A, drawn in the Ilocano dialect, is as follows:

"Know all men by these presents:

"That I, Hipolita Balaqui, a resident of Candon, Province of Ilocos Sur, widow, of age, do hereby state that in consideration of the good services rendered to me by Placida Dongso, married to Antonio Galvez, from her childhood up to the present time, having lived with me, and been treated by me as a daughter of mine, I give her as a gratuity or gift my parcels of land, together with the contents thereof, situated in the barrio of San Nicolas and San Pedro, of this municipality, Province of Ilocos Sur, Philippine Islands, the area and boundaries of which are described as follows: (The two properties in question are here described.)

"This gift to said Placida Dongso resident of Candon, Ilocos Sur, Philippine Islands, in recompense for her services to me, does not pass title to her during my lifetime; but when I die, she shall be the true owner of the two aforementioned parcels, including my house and shed thereon, and she shall be rightfully entitled to

transmit them to her children. I also bind myself to answer to said Placida and her heirs and successors for this property, and that none shall question or disturb her right.

"Lastly, I earnestly enjoin said Placida Dongso to cherish my eternal love and memory after my death, and to try to pray for my soul to Our Blessed Lord, making use of one-half of the products of the said rice lands, in case she should obtain any products therefrom, and it is necessary for my yearly commemoration.

"In witness whereof, I sign or ask someone to write my name at the foot hereof, because I do not know how to write, and I stamp my right thumb-print between my name and surname. At Candon, Ilocos Sur, Philippine Islands, this day, November 18th, 1918.

"(With finger-print) HIPOLITA BALAQUI"

The appellants, dwelling on the words of the fourth paragraph of the deed of gift just quoted, "does not pass title to her during my lifetime; but when I die, she shall be the true owner of the two aforementioned parcels," contend that the gift in question is a donation mortis causa, and, the requisites and conditions indispensable for a will, according to article 620 of the Civil Code, being lacking is null and void.

Taking the deed above quoted as a whole, it is observed, in the first place, that Hipolita Balaqui, wishing to reward Placida Dongso for the latter's services since said Placida's childhood, who lived with her and was treated by her as a daughter, she donated to her two parcels of land with their improvements; in the second place, it is noted that in the same deed Hipolita Balaqui guaranteed to Placida Dongso and her heirs and successors, the right to said property thus conferred. From the moment Hipolita Balaqui guaranteed the right granted by her to Placida Dongso to the two parcels of land by virtue of the deed of gift, she surrendered such right; otherwise there would be no need to guarantee said right. Therefore, when Hipolita Balaqui used the words upon which the appellants base their contention that the gift in question is a donation mortis causa, the donor meant nothing else than that she reserved of herself the possession and usufruct of said two parcels of land until her death, at which time the donee would be able to dispose of them freely.

Furthermore, there is nothing in the deed of gift to show that said gift was made by Hipolita Balaqui in favor of Placida Dongso in consideration of her own death.

The Supreme Court of Spain, in its decision of January 28, 1898, held:

"Considering that a donation mortis causa differs, from a donation inter vivos in that it is made, as its name implies, in consideration of death or mortal peril, without the donor's intention to lose the thing or its free disposal in case of survival, as in testamentary dispositions, and that such is the definition contained in the laws of the Instituta and the Digesto, and in law 11, title 4, Partida 5, cited in the first assignment of error, as well as in article 620 of the Civil Code, in providing that the gifts to be governed by the rules of testamentary succession are those taking effect upon the donor's death; and that donations inter vivos are those made without such consideration, but out of the donor's pure generosity and the recipient's deserts, although the subject matter is not delivered at once, or the delivery is to be made post mortem, which is a simple matter of form and does not change the nature of the act, and such gifts are irrevocable, especially if without a price and onerous in character, according to the Laws proem 1, 4, and 6, of the title and Partida cited.

"Considering that it is to the latter class that the gift made by Dna. Simona Aboitiz in the marriage settlements of D. Santiago de Anduiza and Dna. Agueda Gualberto de Aboitiz, belongs, the 80,000 reales constitutes the dowry to be delivered upon her death, inasmuch as such gift was made not in consideration of death or peril, but of the donor's generosity and wish to secure the sustenance of the marriage celebrated."

For the foregoing considerations, and taking into account the doctrine of the Supreme Court of Spain quoted above, we are of opinion and so hold, that as the donor guaranteed the right which she conferred on the donee by

virtue of the deed of gift, wherein, in recompense of the latter's good services to the former, she donates to her the two parcels of land with their improvements, said gift is inter vivos and irrevocable, and not mortis causa, notwithstanding the fact that the donor stated in said deed that she did not transfer the ownership of the two parcels of land donated, save upon her death, for such a statement can mean nothing else than that she only reserved to herself the possession and usufruct of said property, and because the donor could not very well guarantee the aforesaid right after her death.

By virtue whereof, and finding no error in the judgment appealed from, the same is affirmed in its entirety, with costs against the appellant. So ordered.

Avanceña, C. J., Johnson, Street, Villamor, Johns, and Romualdez, JJ., concur.

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